except in a very small number of cases based upon special reasons and upon ancient practice, coming down from ruder ages, now mostly obsolete in England, and never, so far as we are aware, introduced into this country." The majority of courts, however, in civil actions for injuries to the person, assert that the court does have the power to compel the plaintiff to undergo a physical examination. *Schroeder* v. *C. R. I. & P. Ry. Co.*, 47 Ia. 375; 3 WIGMORE ON EV., § 2220. This power has also been exercised by the courts when the marriage relation has been sought to be annulled on the ground of impotency or incapacity to perform the marital act. See note to *Cleveland Ry. Co.* v. *Huddleston*, 68 A. S. R. 251. The courts, however, have been very reluctant to exercise this power in rape or cognate offenses where the prosecutrix has nothing to gain. In *McGuff* v. *State*, 88 Ala. 147, the court said: "It may well be doubted in rape cases whether the court has power to make an order compelling the inspection of the private person of a prosecutrix, in the event of her refusal to submit to such examination. If such right exists at all, we should hold it to be a matter of judicial discretion, to be exercised only in cases of extreme necessity, and not a subject of review on appeal to this court." The court has also refused to grant such an order on the ground of public policy because "modest women would oftentimes doubtless prefer to bear with the wrong visited upon them than to expose themselves to the humiliation of a physical examination." *Thomas* v. *Commonwealth*, 188 Ky. 509. And in prosecutions for slander the court has refused to order the prosecutrix to submit to a physical examination. *Kern* v. *Bridwell*, 119 Ind. 226. One reason why the courts more readily order a physical examination in civil cases than in criminal actions is that the court may easily enforce its order in such cases by declaring a non-suit should the order be disobeyed. Whether the court is without authority to grant such an order, as is held by the principal case, may well be doubted; it is certain that the courts have hesitated to exercise such a power.

HUSBAND AND WIFE—HUSBAND'S LIABILITY TO MERCHANT FOR NON-NECESSARIES PURCHASED BY DESERTING WIFE.—Appellant and wife had been married three years. During that time the wife had made two purchases of clothing which was not necessary upon the credit of the appellant and he had paid the bills. On the day that the wife deserted the appellant she purchased on his credit non-necessary clothing to the value of $175. She started divorce proceedings three days later, and the appellant then notified the appellee that he would no longer be responsible for debts contracted by his wife. *Held*, appellant was liable for the value of the goods purchased. *Martz* v. *Selig Dry Goods Co.* (Ind. App. 1921), 131 N. E. 528.

It is well settled that the husband is liable for necessaries purchased by his wife. As to what may constitute necessaries, see 13 MICH. L. REV. 262. The liability continues after a separation due to the fault of the husband, *Wisnom* v. *McCarthy*, (Cal.), 192 Pac. 337, but not unless the plaintiff has shown that the separation was due to the husband's misconduct. *Vusler* v. *Cox*, 53 N. J. Law 516. However, to establish liability for non-necessaries it must be shown that the wife was the express or implied agent of the hus-

band. The mere marital relationship will not establish the agency. *Baker* v. *Witten,* 1 Okl. 160; *Wanamaker* v. *Weaver,* 176 N. Y. 75. The husband's failure to disaffirm his responsibility for his wife's purchase of hats for his daughter, they being non-necessaries, was held to amount to ratification, and he was liable. *Auringer* v. *Cochrane,* 225 Mass. 273, 15 MICH. L. REV. 521. The wife's authority to act as agent for her husband may be implied from the husband's absence under some circumstances. See SCHOULER, MARRIAGE, DIVORCE, SEPARATION, AND DOMESTIC RELATIONS (Ed. 6), §§ 135-145. The agency may be terminated by notice to the third party. Such notice was imputed, where the wife's father was an officer of the bank where the husband kept his funds. When she checked out these funds after separation from her husband the bank was held liable for the money paid to the wife, although she had been accustomed to check against his account to pay current expenses of his business. *Addison* v. *Dent County Savings Bank of Salem* (Mo. 1920), 226 S. W. 323. Where a wife deserted her husband and went to live with another man, her order of goods on the husband's credit, with delivery at her changed address, was held to give the merchant notice sufficient to terminate the agency. *Swan* v. *Mathieson,* 27 Times L. Rep. 153. The principal case seems sound in holding that the husband's liability continues, even after desertion by the wife, until notice of the fact to the merchant, since the liability is based upon the appearance from previous conduct that the wife was authorized to act generally for her husband.

JURORS—REFUSAL TO EXCLUDE JUROR HAVING AN OPINION AS TO DEFENDANT'S GUILT.—A statute provided that a juror having an opinion not positive in its character, or not based on personal knowledge of the facts, shall not be disqualified provided he swears he can render an impartial verdict according to the evidence, and the court believes he can do so. The question was whether one who had formed an opinion from reading newspaper accounts of a previous trial, but who swore that he could set his opinion aside, and render a verdict according to the evidence, was disqualified. *Held,* by a divided court, that, the opinion being founded on newspaper reports, it would be a reflection upon a man's intelligence and integrity to find that notwithstanding such opinion he would not be able to base his verdict solely upon the evidence, when he swears he can do so, and the court believes him. *People* v. *Garner,* (Mich., 1921), 184 N. W. 577.

The common law rule, as recognized in this country, did not require the disqualification of a juror simply because he had formed an opinion as to the guilt or innocence of the accused, but held him incompetent only in case the opinion was so strong as to prevent him from rendering a verdict according to the evidence. See note to *Smith* v. *Eames,* 36 Am. Dec. 522. The statute involved in the principal case is declaratory of this principle, and the question for the court to decide is whether the character of the opinion is such as to disqualify. Whether an opinion formed from reading newspaper reports is of such a character as would necessarily prevent a juror from deciding a case according to the evidence is in conflict. The majority of cases hold that an opinion based upon such information does